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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1106

ARLENE MANSON)
)
Petitioner)
)
v)
)
STATE OF INDIANA)
)
Respondent)

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

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STATE OF INDIANA	)
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PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

Arlene Manson, by counsel, Palmer K. Ward, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Indiana in affirming the judgment of the Circuit Court of Howard County, Indiana upon her conviction of the crime of grand larceny on the 2nd day of October, 1967 and the denial of petitioner's petition for rehearing which was denied on November 13, 1967.

OPINION OF THE SUPREME COURT OF INDIANA

The opinion of the Supreme Court of Indiana is reported at 229 N. E. (2) 801 and is reproduced herein in Appendix "A" to this petition.

JURISDICTION

1. The judgment of the Supreme Court of Indiana was entered on October 2, 1967.

2. A timely Petition for Rehearing was filed and overruled by the Supreme Court of Indiana on November 13, 1967.

3. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Section 1257 (3).

QUESTIONS PRESENTED

1. Can an arrest and search of an automobile be held valid in regard to the determination of probable cause when the information furnished to the arresting officer is triple hearsay? The arrest was upheld by the Supreme Court of Indiana although the arresting officer received his information from a radio dispatcher who had a call from a third person who

had been told certain facts by a fourth person.

2. Does a person arrested in an automobile have "standing" to move to suppress evidence obtained by an illegal arrest when that person does not own the automobile nor is she in possession and control of the automobile although she was a passenger in said automobile at the time of her arrest?

CONSTITUTIONAL PROVISIONS

United States Constitution, Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularlly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Fourteenth Amendment:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or

enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CONSTITUTION OF STATE OF INDIANA
Article I, Section 11:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

STATEMENT OF THE CASE

Petitioner, and another, were arrested and charged with the crime of grand larceny in the Circuit Court of Howard County, Indiana on the 26th day of November, 1962. On August 8, 1965 petitioner was sentenced to the Indiana Woman's Prison for not less than one (1) nor more than ten (10) years, fined in the sum of Five Hundred Dollars and costs and disfranchised for a period of three years said judgment being reproduced herein in Appendix "B" to this

petition.

On February 5, 1964, and prior to trial, the petitioner filed her Motion to Suppress Evidence, which omitting formal parts is as follows:

> "That said search was without a warrant and in violation of the Defendant's rights as guaranteed by Article I, Section 11 of the Constitution of the State of Indiana." (Tr. p. 11.)

A hearing was held on the Motion to Suppress, the pertinent evidence there adduced is as follows:

Evidence of the defendant:

ROSE, Frank Direct Examination

I am a police officer and arrested the defendant. I did not have a warrant for the arrest of either defendant. I did not know the defendant when I placed her under arrest; she was seated in a car with the other defendant. I arrested them for shoplifting, I did not see them take anything nor did I see anything in their possession at that time. I received a radio message that two colored subjects were at the Maple Crest

Shopping Center, believed to be in Golightly's Store, they were seen in a blue 1960 Oldsmobile with an Indianapolis prefix; they were believed to have put some stolen merchandise into the trunk of the automobile. When I arrived I saw the defendants in Golightly's store; they left the store and went to Grant's where they got a sack of candy and then went to the automobile, I then arrested them both for shoplifting; told the defendant, Suber, I wanted to search the car trunk and he opened it and I found eight suits and a woman's coat. (Tr. Ev. pp. 104-110.)

ROSE, Frank — Cross Examination

I made the arrest on the basis of the radio report I received. I talked to Mrs. Umbarger and she stated she had seen the suspects in the car and she gave me the license number-she was in a car nearby and saw the suspects twisting around in the car-the man got out and took a laundry bag siwth something in it and placed it in the trunk of the car. (Tr. Ev. pp. 110-112.)

UMBARGER, Donna Direct Examination

I work at Miller's Department Store. I saw the defendants in front of our store; a customer came into the store and described the two defendants and said they had been seen putting something in their car and they thought they had taken it from Miller's store. I saw the defendants put something in the trunk of the car; they were twisting around in the car. They then went back to Golightly's and I called the police. I described the car, the license number and said we supsected them of shoplifting, this was a suspicion on my part. (Tr. Ev. pp. 114-117.)

UMBARGER, Donna Cross Examination

A customer told me they had seen the two subjects steal some merchandise from Miller's. (Tr. Ev. p. 118.)

HOW THE FEDERAL QUESTION WAS RAISED

The question of the illegal arrest was first raised by the defendant, as outlined above, by her written Motion to Suppress, prior to the trial of the case in chief.

A memorandum was filed after the hearing on the Motion to Suppress. (Tr. pp. 15-16.) The matter was again raised in the Motion For New Trial. (Tr. pp. 18-21.) At the time of sentencing an additional memorandum was filed specifically raising the Federal question. (Tr. pp. 25-37.) Also an additional memorandum was filed in support of the Motion for New Trial. (Tr. pp. 39-44.) The question was briefed and argued in the Supreme Court of Indiana.

ARGUMENT

A. Whether there was probable cause for an arrest without a warrant is always a judicial question to be determined after full development of the relevant, material facts.

It is respectfully submitted that the decision by Judge Arterburn of the Indiana Supreme Court has for all practical purposes put the decision as to probable cause in the hands of the police, without any judicial determination.

The evidence adduced by the defendant at her hearing on the Motion to Suppress

clearly shows that the arresting officer did not have an arrest warrant or a search warrant nor was the defendant seen committing a misdemeanor within the view of the arresting officer. The question is simple. Did the officer have probable cause to arrest the defendant?

An unknown informant tells Mrs. Umbarger that two colored suspects were seen putting something in a car and the unknown informant thought it had been stolen from Miller's store. Mrs. Umbarger saw the suspects twisting around in a car and saw them put something in the trunk of the car. Mrs. Umbarger called the police, described the car, the license number and said we suspected them of shoplifting. The police radioed this information to Officer Rose who observed the defendants in two stores and arrested them, in his words, on the basis of the radio report I received from headquarters.

This Court held in Weeks v. United States (1914), 232 U.S. 383, 34 S. Ct.341,

58 L. Ed. 652:

> "The effect of the 4th Amendment is to put the Courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers and effects, against all unreasonable searches and seizures under the guise of law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all intrusted under our Federal system with the enforcement of the laws. * * * The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land."

These principles, through the Fourteenth Amendment of the Constitution of the United States, been made applicable to officers and courts in every jurisdiction in the United States, state or federal.

We submit that in order for there to be probable cause for the arrest herein the information furnished in the first place must be reliable. The evidence

shows that an unknown person made a statement to Mrs. Umbarger who called the police who radioed officer Rose who made the arrest.

As was stated in Potter v. United States (1966), 362 F.(2) 493 (C.A.5) at page 498:

> "If reliable information is to be the sole and uncorroborated basis of probable cause, it finds no support in the communications of an unknown informer. It is self evident that none can know the reliablility of an unknown source, and reliability is the controlling factor, Costello v. United States, 9 Cir., 1962, 298 F.2d 99, cert. den. 376 U.S. 930, 84 S. Ct. 699, 11 L. Ed. 2d 650."

The arrest herein, and subsequent search of the automobile, was made by officer Rose, not for any transgressions of the petitioner in his presence, or for anything he observed with his own senses but was made solely on the basis of a radio message based upon a hearsay statement of an unknown and therefore unreliable informant.

Clearly petitioner's rights as guaranteed by the fourth amendment to

the Constitution of the United States have been violated and certiorari should be granted.

B. Certiorari should be granted herein for the further reason that the Supreme Court of Indiana held that the petitioner did not have "standing" to ask that the evidence be suppressed since she did not own the car, and was not in possession or control of it.

This holding is in direct conflict with the decision of this Court in the case of Jones v. United States(1960), 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed.(2) 697 where the Court said:

> "No just interest of the government in the effective and rigorous enforcement of the criminal law will be hampered by recognizing that anyone legitametely on premises where a search occurs may challenge its legality by was of a motion to suppress, when its fruits are proposed to be used against him."

The petitioner herein was legitametely in the automobile owned and driven by the defendant Suber and the fruits

of the search of the automobile were introduced into evidence against her at the trial of this cause.

Clearly the petitioner has "standing" to move to suppress the evidence that was used against her at the trial.

CONCLUSION

For the reasons herein stated we respectfully pray the Court to issue a Writ of Certiorari to the Supreme Court of Indiana to review their final judgment.

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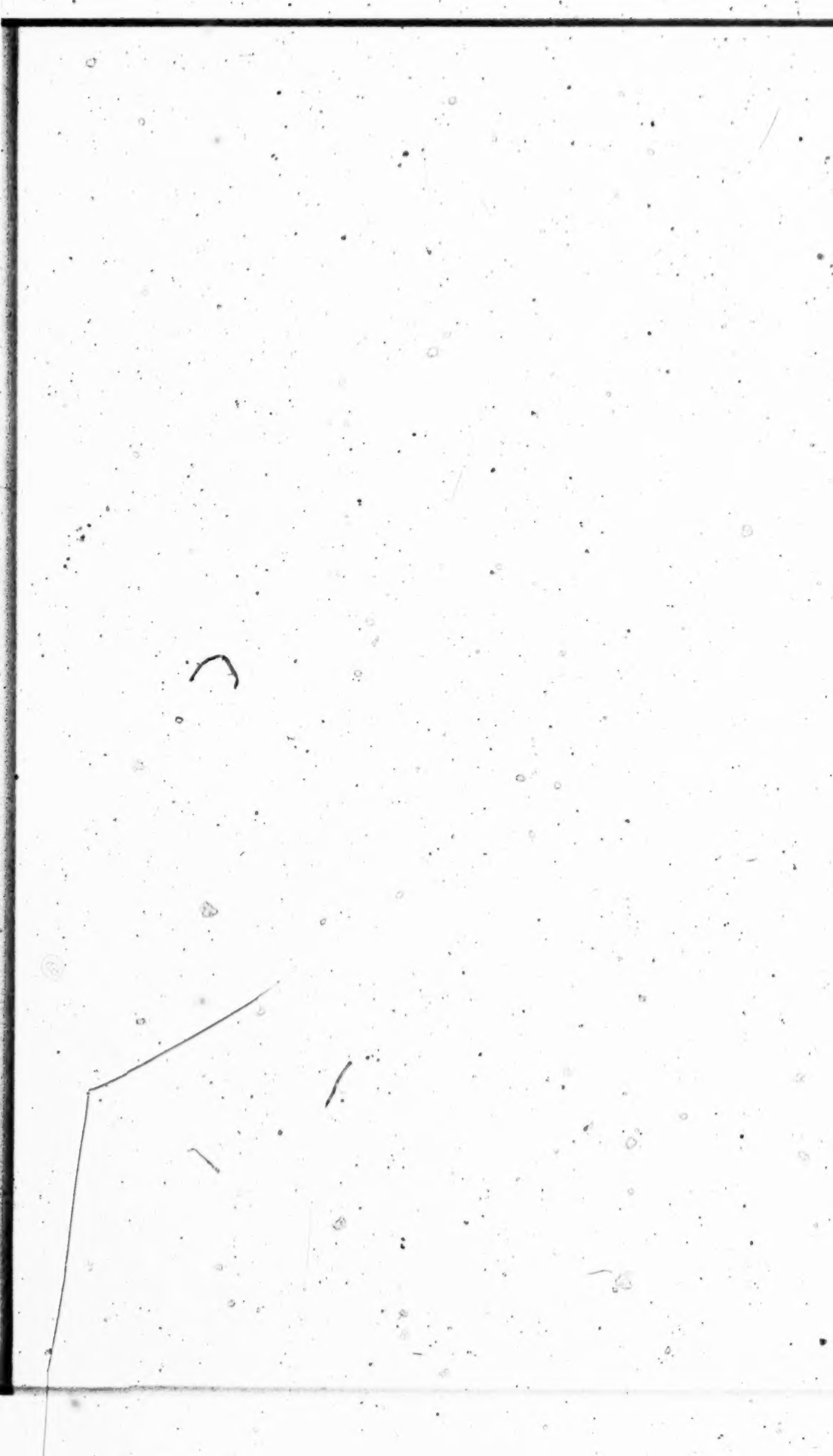

APPENDIX "A"

Opinion of the Supreme Court of Indiana:

ARTERBURN, Judge

The appellants were charged and found guilty of grand larceny and sentenced accordingly. They have appealed. The specifications are that the trial court erred in overruling the motion to suppress evidence obtained in the search of defendant's Suber's automobile. The points presented in the briefs center mainly about this contention.

The evidence shows that officer Frank Rose of the Kokomo police department received a radio message over the police radio syatem that there were two colored subjects at Maplecrest shopping center and believed to be in Golightly's store, and they were seen in a blue 1960 Oldsmobile with Indianapolis prefix on the license number, and that they had put some stolen merchandise in the trunk. When officer Rose arrived, he went to Golightly's store at the shopping center

and apparently found the two colored persons and followed them as they circled about the store, came out and went into another store known as Grants, made a small purchase and then went to the parking lot to the Oldsmobile described in the radio message. Mr. Suber, the appellant, started his car and the officer then arrested him "for shoplifting."

The officer says that he did not see the appellants do anything which would cause him to believe they were shoplifting, but he did have reason to believe because of the police call that there was stolen merchandise in the trunk of the car. He thereupon searched the car and in the rear trunk found a laundry bag with eight suits on clothes hangers and pants still on clothes hangers, rolled up; also a lady's coat that had a $100.00 price tag thereon. None of the merchandise in the back of the car was wrapped for purchase. The officer stated that appellant Suber said upon inquiry that the merchandise came from the Golightly store.

It is undisputed that a search of a car without warrant after a lawful arrest of the one in possession is not constitutionally interdicted. Carroll v. United States (1925), 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543; 25 I.L.E., Search & Seizure, Sec. 22, p. 422.

Parenthetically, we may say appellant Manson has no standing to ask that the evidence obtained in the search of the car be suppressed, since she did not own it, and was not in possession or control of it. 25 I.L.E. Search & Seizure, Sec. 5, p. 417.

It is argued that there was no probale cause for the police officer to make the arrest and subsequent search based upon the arrest, for the reason that the only information he had was based upon the police radio message to him from the dispatcher at police headquarters. In support of that it is further urged that the radio broadcast made from police headquarters

was based solely upon the hearsay of Mrs. Donna Umbarger, who was informed by unamed persons that the appellants had taken the merchandise from Golightly's.

In determining the existence of probable cause for an arrest or search, must we go behind the information which a police officer receives, which appears to him at the time and under the circumstances to be reliable and from a reliable person, and nevertheless examine the basis of the information and its reliability?

It is the law that the fruits of the search cannot be used to support or justify an illegal search. Idol v. State (1953), 233 Ind. 307, 119 N.E. 2d 428.

Likewise, it seems to us that to justify or condemn the good faith search by a police officer upon hindsight information, or which he was not aware, would be illogical. Probable cause justifying an arrest without a warrant exists where facts and circumstances within the arresting officer's knowledge or of which he had

reasonably trustworthy information, would lead a reasonably prudent person under the conditions at the time to believe a crime had been committed.

The right to arrest without warrant grew out of the need to protect the public safety by making prompt arrests. It had its origin in the ancient "Hue and Cry", upon which all hearing the alarm were bound to join in pursuit of a felon. The "Hue and Cry", if repeated by another, would be hearsay.

In this case the arresting officer acted upon an alarm over a police radio to him.

The law looks at the facts and circumstances as they were presented to the police officer who had to make a prompt decision. It is not necessary that the information be direct. Hearsay may at times be sufficient basis for probable cause for arrest or search.

> "The fact that the information received by the arresting officers upon which they began to look for appellant came to them through the

> the medium of an informer who received his information from another, does not render such information incredible. The general rule against the admission of hearsay evidence has never been applied in inquiries into the existence of probable cause, Hanger v State(1928), 199 Ind. 727, 160 N.E. 449; Gwinn v. State (1929), 201 Ind. 420, 166 N.E. 769, and it manifestly would be impossible to enforce the law if it was necessary to provide the police officers who are sent out to make arrests with direct first-hand knowledge concerning all such matters." Hinds v. State (1930), 201 Ind. 563,567, 170 N.E. 539, 540.

Obviously in the case before us the police officer, if he were to do his duty promptly, could not be delayed by checking the reliability of the information behind the call over the police radio. He must by necessity rely upon headquarters. A police syatem, to be effective, must be be one in which the members work together, keeping each other informed and relying upon the actions and communications between members. With the use of automobiles in the commission of crime and escape, law enforcement officers are compelled to act

with greater speed and less hesitancy than in years past. We find probable cause exists in this case for the arrest and search made by the officer. Scaffido v. State (1934), 215 Wis. 389, 254 N. W. 651; United States v. Smith (1966), 6 Cir., 357 F. 2d 318; 6 C.J.S. Arrest, Section 6, p. 600.

It is also urged that the evidence is not sufficient to sustain the finding of guilty. This contention centers mainly upon the argument that there is no evidence that these goods came from the Golightly store at the particular place where the appellant's were arrested, since Golightly's had three other stores at other places in Kokomo. However, in our opinion, there is sufficient evidence from which a jury or the court could find that this property came out of the Golightly store at the place where the appellants had parked their car and were found immediately following the radio call. There can be no doubt that this

was not purchased merchandise, but stolen merchandise. The tags were still attached, the suits were still on hangers, and the merchandise was not wrapped in shopping paper. The inventory showed the shortage of goods in the store. There was an empty space on the rack in the store where the suits of this particular size would have been located. There is no evidence that these appellants were in any of the other Golightly stores in other parts of the city. In our opinion, the circumstantial evidence here is sufficient to convince any reasonable person that this property came out of Golightly's store at the place where the appellants were arrested and were discovered with the goods.

Finally, appellant Suber, when he was arrested and asked where the merchandise came from, stated "all the merchandise came from Golightly's Store". From this statement one would conclude he referred to the store at the location where they

were then talking. The evidence was sufficient in this case.

It is also contended, but we think not too seriously, that the police officer did not make a proper arrest since he stated he was arresting appellants "for shoplifting". It was pointed out that there was no statute making "shoplifting" under that name a crime at that time. To us, this is not important. The importantance is they were arrested, and "shoplifting" in our opinion, comprehends larceny in lay language. Certainly larceny was a crime at the time.

The judgment is affirmed.

HUNTER, C. J., and LEWIS and MOTE, JJ., concur

JACKSON, J., concurs in result.

APPENDIX "B"

Judgment of the Court:

"The Court now Orders said defendant sentenced to the custody of Indiana Women's Prison, Indianapolis, Indiana for a term of not less then one (1) year nor more than ten (10) years and said defendant is fined Five Hundred ($500.00) Dollars and costs incurred by this action. The Court now orders said defendant disfranchised for three years." (Tr. p. 24.)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1107

[redacted],
JEFFERSON THOMAS SUBER,

Petitioners,

v.

STATE OF INDIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

(of JEFFERSON T. SUBER)

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IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

ARLENE MANSON,
JEFFERSON THOMAS SUBER,

Petitioners,

v.

STATE OF INDIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF INDIANA

Petitioner, Jefferson Thomas Suber, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Indiana entered in the above-captioned case on October 2, 1967, petition for rehearing denied on November 13, 1967.

OPINION BELOW

The trial court entered a judgment on the 8th day of August, 1965, printed herein at p. 1a as Appendix A. The Supreme Court of Indiana rendered judgment affirming the trial court and entered an opinion on the 2nd day of October, 1967, which is printed herein at pp. 2a as Appendix B and is reported at 229 N.E. 2d 801; and thereafter on November 13, 1967, the Supreme Court of Indiana denied the Petition For Rehearing of Petitioner Jefferson Thomas Suber, without opinion.

JURISDICTION

The Supreme Court of Indiana entered its opinion affirming the Judgment of the trial court on October 2, 1967. A timely Petition For Rehearing was filed by Petitioner Jefferson Thomas Suber on Monday, Oct. 23, 1967, which petition for rehearing was de-

nied by the Supreme Court of Indiana, without opinion, on November 13, 1967. This Petition for Certiorari is filed within 90 days of that denial, on Monday, February 12, 1968.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3).

QUESTIONS PRESENTED

The federal questions raised herein are:

1. Whether the judicial determination of probable cause (pursuant to the requirements of the Fourth Amendment to the Constitution of the United States of America) for arrest, search and seizure without a warrant by a police officer can be determined and justified by the State court upon the reliance by that police officer for his actions upon what he is told by radio communication from another police officer, completely without judicial

examination and determination of probable cause in respect to the basis of the radio communication itself -- the nature of the information which caused the sending of the radio communication.

2. Whether a radio communication concerning "two colored subjects", which radio communication was in fact based wholly upon hearsay from a person unknown both to the caller and to the police officer she called and relayed the "information" to, can be judicially considered by the State court as probable cause (within the requirements of the Fourth Amendment to the Constitution of the United States of America) for arrest and immediate search and seizure, as an exception to the rule of law followed by that State court that hearsay cannot form the basis of probable cause.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth and Fourteenth Amendments of the Constitution of the United States of America, to-wit:

Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ***

Fourteenth Amendment, Sec. 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunites of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Also Article 1, Section 11 of the Constitution of the State of Indiana, to-wit:

> The right or the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated ***

STATEMENT OF THE CASE

The petitioners were charged in Kokomo, Howard County, State of Indiana, with grand larceny which was alleged to have occurred on November 23rd, 1962, in that city and county. (R. 52, 11. 1-24)

The petitioners filed a motion to suppress the evidence gained upon the search and seizure which was asserted as unlawful upon the ground that the officer had no probable cause to believe that either defendant had committed any unlawful act and the search of their vehicle was not made incidental to a lawful arrest nor under a warrant. (R. 61-63)

The Court heard evidence prior to trial on the motion to suppress, and overruled the same. (R. 103-155, R. 67, 11. 1-8)

Both on the hearing on the motion to suppress and upon the trial of the cause, the evidence established that the arres-

ting officer, Frank Rose, received a radio call on his police radio that there were two colored persons in a blue Oldsmobile, who were suspected of taking merchandise; and when he found the persons who he thought answered the description he followed them through the Golightly store, into another store, and out into the parking lot, seeing nothing during all of that time to indicate that they had taken any mechandise from any place unlawfully. The radio broadcast was made upon a phone call from Mrs. Donna Umbarger, who was told by an unknown person that there were two subjects they had seen putting something in a car that they(the unknown customer) thought had been taken from Miller's Department Store. (R. 115, 14-24) Mrs. Umbarger then saw the persons at the car described by the unknown customer take a laundry bag out of the car and

put it in the back. (R. 115, 23-29) Mrs. Umbarger herself testified that after she saw this, she telephoned the police, described the car, color of the car, license number, and "I said that we were, that they were suspected of being shoplifters," and she further testified that this was mere suspicion on her part. (R. 117, 11-26)

After their conviction in the trial court, both petitioners duly filed their motions for new trial, contending therein that it was error to admit into evidence over their objections and motion to suppress evidence, the articles of clothing obtained in the search of Suber's automobile, and the testimony of Officer Frank Rose which matter he obtained as a result of the search of said automobile. (R. 68, 69)

In their appeal to the Supreme Court

of Indiana, Petitioners duly filed their assignment of errors, contending error in the overruling of their seperate motions for new trial. (R. 1)

In Appellants' Brief, they contended, with appropriate citations, that the automobile of Suber was subject to constitutional immunity from unreasonable search and seizure; that it was an effect within the meaning of Article 1, Sec. 11. of the Indiana Constitution; that no valid search can be predicated upon an invalid arrest; and that the arrest was unlawful because the information received by the police was mere suspicion and there was no probable cause. (Appellants' Brief, pp. 29-36)

Without any specific argument therefore being advanced by the State of Indiana, Appellee, the Supreme Court of Indiana, in its opinion set out hereinafter at pp.

2a to 8a, APPENDIX B, for the first time in this case injected the theory that it was not necessary, in the judicial determination of probable cause, to look behind the police radio broadcast -- that probable cause should be determined on the basis of necessary reliance by that officer on his headquarters. 229 N.E. 2d 801 That Court stated:

> Obviously in the case before us the police officer, if he were to do his duty promptly, could not be delayed by checking the reliability of the information behind the call over the police radio. He must by necessity rely upon headquarters. A police system, to be effective, must be one in which the members work together, keeping each other informed and relying upon the actions and communications between members. With the use of automobiles in the commission of crime and escape, law enforcement officers are compelled to act with greater speed and less hesitancy than in years past. We find probable cause exists in this case for the arrest and search made by the officer.

This was preceded by the statement by the Supreme Court of Indiana that in determining the existence of probable cause for an arrest or search we need

not go behind the information which a police officer receives upon an alarm over a police radio to him -- that his good faith search cannot be condemned upon information of which he was not aware.

In his petition for rehearing and memorandum submitted therewith Petitioner Suber pointed out that the Indiana Supreme Court was deciding a new question for the first time, without argument thereon in the briefs, and that determination by the Indiana Supreme Court refusing to look behind the police call in the determination of probable cause was in violation of the Fourth Amendment to the Constitution of the United States of America.

ARGUMENT

IN THE JUDICIAL DETERMINATION OF PROBABLE CAUSE FOR THE ACTION IN ARREST AND SEARCH BY POLICE OFFICERS ACTING UPON A RADIO COMMUN-

ICATION FROM ANOTHER POLICE OFFICER OR POLICE HEADQUARTERS, THE KNOWLEDGE OF ONE IS THE KNOWLEDGE OF ALL AND A RADIO COMMUNICATION BASED ON SUSPICION WITHOUT PROBABLE CAUSE CANNOT ITSELF BE CONSIDERED PROBABLE CAUSE FOR ARREST AND SEARCH.

The decision of the Supreme Court of Indiana in regard to the determination of probable cause on the basis of the police radio message to the officer who then made the arrest and search is, it is respectfully submitted, one of the most important and far-reaching decisions in the field of criminal law in many years. The radio message as it related to the "merchandise" was that it "was to be believed had been stolen" (R. 111, 11-16, R. 112, 8-9), and the phone call by Mrs. Umbarger based on her observance of two people moving in the car after an unknown person had told her that there were two subjects seen putting something in a car that they thought had been taken from Millers' Department

Store (R. 115, 14-24, R. 115, 25-29) was, by her own testimony (R. 117, 11-26), based on mere suspicion on her part.

There was obviously no probable cause to support the radio call, and no probable cause to support the arrest and search unless the Court closed it eyes and refused to look behind the radio call to the officer. The impracticability of obtaining a search warrant is not a substitute for probable cause -- they are two different things, and probable cause is absolutely necessary to support the arrest or search. Efficiency in the police department cannot be gained and maintained at the expense of recognized constitutional rights.

If the determination made by the Supreme Court of Indiana is to stand, then the right as against unreasonable search and seizure, and arrest, is no more. All

it takes regardless of the groundless nature of the suspicion of the police department is a radio call to an officer calling upon him to make an arrest or conduct a search as to which subject or the object of which search he has no information other than the radio call. It takes no great imagination to see what a boon this will be to the police departments who have no probable cause but lots of suspicion -- they can manufacture instant probable cause merely with the use of the police radio.

This cannot be the law. It <u>is</u> necessary that the police conclude that the informant was credible and that his or her information is reliable.

Aguilar v. State of Texas, 378 U.S. 108, 84 S. Ct. 1509

United States v. Ventresca, 378 U.S. 102, 85 S. Ct. 741, 13 L. Ed. 684

And a <u>judicial</u> examination of the relia-

bility of the information upon which the police acted is necessary.

McCray v. State of Illinois (1967), ___U.S. ___ 87 S. Ct. 1056

The artificial separation by the Court of the police officers and what they knew is illogical. In regard to the action of one officer based on information received from another, the knowledge of one is the knowledge of all.

Commonwealth of Massachusetts v. McDermott, 347 Mass. 246, 197 N.E. 2d 668

Inherent in the decisions of this Court in Aguilar and Ventresca, supra, as well as Brinegar v. United States (1949), 338 U.S. 160, 69 S. Ct. 1302, is the necessity of judicial determination of probable cause as a basis for the action in arrest and search by the police officers, whether the officer received his information from the statement of suspicion by a third party directly to him, or received the call to

make an arrest from headquarters where the call was based upon a telephone call to headquarters by the third party voicing their suspicion.

The true test is whether the police making the broadcast had reasonable grounds to believe that the offense had been committed and that the defendant had committed it.

Farrow v. State of Maryland (1964), 233 Md. 526, 197 A. 2d 434

The judicial determination must go behind the radio message to the arresting officer, to find probable cause.

THERE APPEARS TO BE NO JUSTIFICATION FOR THE DECISION OF THE SUPREME COURT OF INDIANA AS AGAINST PETITIONERS, SINCE THAT COURT HAS SINCE REAFFIRMED ITS RULE OF LAW THAT HEARSAY WILL NOT SUPPORT PROBABLE CAUSE.

Following the decision in this cause, the Supreme Court of Indiana, on Nov. 30, 1967, in the case of McCurry v.

State of Indiana, 231 N.E. 2d 227, citing the case of Rohlfing v. State (1949), 227 Ind. 619, 88 N.E.2d 148, flatly stated that "The judicial determination of probable cause as required herein must be based on facts and not on hearsay," and further that "The doctrines with reference to hearsay as set out in Rohlfing v. State, supra, still remains the law in Indiana." That Court quoted this Court in the case of Aguilar v. State of Texas (1964), 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723, repeating:

> "...the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identify need not be disclosed *** was credible or his information reliable. Otherwise, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the Constitution requires, but instead by a police officer engaged in the often competitive enter-

> prise of ferreting out crime *** or, as in this case, by an unidentified informant.

It sounds like an entirely different Court, and Petitioner Suber respectfully submits that not only has the State of Indiana wholly failed to ensure and protect his rights as against unreasonable search and seizure. but has wholly failed to ensure and protect his right to due process of law, and has denied him the qual protection of the laws.

Fourth and Fourteen Amendments to the Constitution of the United States

CONCLUSION

The decision of the Supreme Court of Indiana is in direct contravention of the Fourth and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, for the foregoing reasons, Petitioner Suber prays that this Court grant a writ of certiorari to review the decision of the Supreme Court of

Indiana.

Respectfully submitted,

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Jefferson T. Suber

APPENDIX A

JUDGMENT ENTRY OF THE HOWARD CIRCUIT COURT, STATE OF INDIANA, AUG. 8, 1965

In the
Howard Circuit Court, State of Indiana
Cause No. 4709

STATE OF INDIANA

-vs-

JEFFERSON THOMAS SUBER

Winslow, Lester E., Judge

JUDGMENT ENTRY

Comes now said defendant and appears in open court for hearing of said cause. The Court now ask said defendant if he knows of any legal reason why sentence should not be pronounced and defendant answers "No, I don't." The Court now orders said defendant sentenced to the custody of Indiana State Prison, Michigan City, Indiana for a term not less than One (1) year now more than ten (10) years, and is fined $500.00 and costs incurred by this action. The Court now orders said defendant disfranchised for three (3) years.

The Court now orders Recongnizance Bond.

The Court now orders said cause continued pending ruling on Motion for new trial.

APPENDIX B

OPINION OF THE SUPREME COURT OF INDIANA
October 2, 1967

In The
Supreme Court of Indiana
Cause No. 30955

ARLENE MANSON,
JEFFERSON THOMAS SUBER,
Appellants,

-vs-

STATE OF INDIANA,
Appellee.

ARTERBURN, Judge.

The appellants were charged and found guilty of grand larceny and sentenced accordingly. They have appealed. The specifications are that the trial court erred in overruling the motion to suppress evidence obtained in the search of defendant's Suber's automobile. The points presented in the briefs center mainly about this contention.

The evidence shows that officer Frank Rose of the Kokomo police department received a radio message over the police radio system that there were two colored subjects at Maplecrest shopping center and believed to be in Golightly's store, and they were seen in a blue 1960 Oldsmobile with Indianapolis prefix on the license number, and that they had put

some stolen merchandise in the trunk. When officer Rose arrived, he went to Golightly's store at the shopping center and apparently found the two colored persons and followed them as they circled about the store, came out and went into another store known as Grants, made a small purchase and then went to the parking lot to the Oldsmobile described in the radio message. Mr. Suber, the appellant, started his car and the officer then arrested him "for shoplifting."

The officer says that he did not see the appellants do anything which would cause him to believe they were shoplifting, but he did have reason to believe because of the police call that there was stolen merchandise from the shopping center in the trunk of the car. He thereupon searched the car and in the rear trunk found a laundry bag with eight suits on clothes hangers and pants still on clothes hangers, rolled up; also a lady's coat that had a $100.00 price tag thereon. None of the merchandise in the back of the car was wrapped for purchase. The officer stated that appellant Suber said upon inquiry that the merchandise came from the Golightly store.

(1) It is undisputed that a search of a car without warrant after a lawful arrest of the one in possession is not constitutionally interdicted. Carroll v. United States (1925), 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543; 25 I.L.E., Search & Seizure, Sec. 22, p. 422.

(2) Parenthetically, we may say appellant Manson has no standing to ask that the evidence obtained in the search of the

car be suppressed, since she did not own it, and was not in possession or control of it. 25 I.L.E. Search & Seizure, Sec. 5, p.417.

It is argued that there was no probable cause for the police officer to make the arrest and subsequent search based upon the arrest, for the reason that the only information he had was based upon the police radio message to him from the dispatcher at police headquarters. In support of that it is further urged that the radio broadcast made from police headquarters was based solely upon the hearsay of Mrs. Donna Umbarger, who was informed by unnamed persons that the appellants had taken the merchandise from Golightly's.

In determining the existence of probable cause for an arrest or search, must we go behind the information which a police officer receives, which appears to him at the time and under the circumstances to be reliable and from a reliable person, and nevertheless examine the basis of the information and its reliability?

(3) It is the law that the fruits of the search cannot be used to support or justify an illegal search. Idol v. State (1953), 233 Ind. 307, 119 N.E. 2d 428.

(4,5) Likewise, it seems to us that to justify or condemn the good faith search by a police officer upon hindsight information, of which he was not aware, would be illogical. Probable cause justifying an arrest without a warrant exists where facts and circumstances within the arresting officer's knowledge or of which he had reasonably trustworthy information,

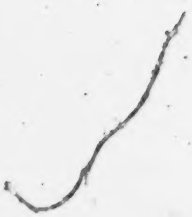
would lead a reasonably prudent person under the conditions at the time to believe a crime had been committed.

The right to arrest without warrant grew out of the need to protect the public safety by making prompt arrests. It had its origin in the ancient "Hue and Cry", upon which all hearing the alarm were bound to join in pursuit of a felon. The "Hue and Cry", repeated by another, would be hearsay.

In this case the arresting officer acted upon an alarm over a police radio to him.

(6) The law looks at the facts and circumstances as they were presented to the police officer who had to make a prompt decision. It is not necessary that the information be direct. Hearsay may at times be sufficient basis for probable cause for arrest or search.

> "The fact that the information received by the arresting officers upon which they began to look for appellant came to them through the medium of an informer who received his information from another, does not render such information incredible. The general rule against the admission of hearsay evidence has never been applied in inquiries into the existence of probable cause. Hanger v. State (1928), 199 Ind. 727, 160 N.E. 449; Gwinn v. State (1929), 201 Ind. 420, 166 N.E. 769, and it manifestly would be impossible to enforce the law if it was necessary to provide the police officers who are sent out to make arrests with direct first-hand knowledge concerning all such mat-



ters." Hinds v. State (1930), 201 Ind. 563, 567, 170 N.E. 539, 540.

(7) Obviously in the case before us the police officer, if he were to do his duty promptly, could not be delayed by checking the reliability of the information behind the call over the police radio. He must by necessity rely upon headquarters. A police system, to be effective, must be one in which the members work together, keeping each other informed and relying upon the actions and communications between members. With the use of automobiles in the commission of crime and escape, law enforcement officers are compelled to act with greater speed and less hesitancy than in years past. We find probable cause exists in this case for the arrest and search made by the officer. Scaffido v. State (1934), 215 Wis. 389, 254 N.W. 651; United States v. Smith (1966) 6 Cir., 357 F. 2d 318; 6 C.J.S. Arrest Sec. 6, p. 600.

(8) It is also urged that the evidence is not sufficient to sustain the finding of guilty. This contention centers mainly upon the argument that there is no evidence that these goods came from the Golightly store at the particular place where the appellants were arrested, since Golightly's had three other stores at other places in Kokomo. However, in our opinion, there is sufficient evidence from which a jury or the court could find that this property came out of the Golightly store at the place where the appellants had parked their car and were found immediately following the radio call. There can be no doubt that this was not purchased merchandise, but stolen merchandise. The tags

were still attached, the suits were still on hangers, and the merchandise was not wrapped in shopping paper. The inventory showed the shortage of goods in this store. There was an empty space on the rack in the store where the suits of this particular size would have been located. There is no evidence that these appellants were in any of the other Golightly stores in other parts of the city. In our opinion, the circumstantial evidence here is sufficient to convince any reasonable person that this property came out of Golightly's store at the place where the appellants were arrested and were discovered with the goods.

Finally, appellant Suber, when he was arrested and asked where the merchandise came from, stated "all the merchandise came from Golightly's Store". From this statement one would conclude he referred to the store at the location where they were talking. The evidence was sufficient in this case.

(9) It is also contended, but we think not too seriously, that the police officer did not make a proper arrest since he stated he was arresting appellants "for shoplifting". It was pointed out that there was no statute making "shoplifting" under that name a crime at that time. To us, this is not important. The importance is they were arrested, and "shoplifting" in our opinion, comprehends larceny in lay language. Certainly larceny was a crime at the time.

The judgment is affirmed.

HUNTER, C.J., and LEWIS and MOTE, JJ.,

concur.

JACKSON, J., concurs in result.

(It is to be noted that upon the denial of the petition for rehearing thereafter, JACKSON, J., dissented.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1106

ARLENE MANSON,

Petitioner,

vs.

STATE OF INDIANA,

Respondent.

No. 1107

ARLENE MANSON,
JEFFERSON THOMAS SUBER,

Petitioners,

vs.

STATE OF INDIANA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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OCTOBER TERM, 1967

No. 1106

ARLENE MANSON,

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Petitioners,

vs.

STATE OF INDIANA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

Respondent has combined the two causes in this matter in one brief since they were tried and convicted as co-defendants, and the same issues are raised as pertaining to both.

Respondent restates the questions presented and raised in the two Petitions as follows:

1. Do the constitutional protections afforded a defendant by the Fourth Amendment to the United States Constitution, and applied to the states through the Fourteenth Amendment to the United States Constitution, preclude the use of evidence discovered as a result of a search incidental to an arrest, where the "probable cause" forming the basis of the arrest was a radio dispatcher's message based on the report of a person who was informed by other unnamed persons that two "colored subjects", had placed stolen merchandise in the trunk of a certain described automobile.

2. Does a guest passenger in an automobile which has been subjected to search and seizure, have standing to suppress any evidence found therein where the evidence obtained may be used against her.

STATEMENT OF THE CASE

The Petitioners were convicted of grand larceny in the Circuit Court of Howard County, Indiana, on April 28, 1965. They were thereafter sentenced to not less than one [1] nor more than ten [10] years imprisonment in the Indiana penal system. The convictions were affirmed on October 2, 1967, by the Indiana Supreme Court, and a rehearing was denied on November 3, 1967. *Manson v. State,* — Ind. —, 229 N.E.2d 801 (1967).

The convictions were based on affidavits dated November 26, 1962, and filed in the Howard Circuit Court. Subsequently on February 5, 1964, the Petitioners filed a motion to suppress, which was overruled on May 13, 1964. The evidence adduced at trial indicated that on November 23, 1962, officer Frank Rose of the Kokomo, Indiana, police

force received a radio message from the police dispatcher that two "colored subjects" were seen placing what was believed to be stolen merchandise into the trunk of a 1960 Oldsmobile with an Indianapolis prefix on its license plate. The person making the report to the police, Donna Umbarger, testified that persons unknown to her had told her that the Petitioners were engaged in shoplifting, and she therefore decided to watch them. She followed them to their car, where she observed them doing a lot of "squirming" and "twisting" around, and then watched them get out of the car with a loaded laundry bag which was placed in the trunk of the car (Tr. p. 116, 169). She thereafter called the police, describing the car including the license plate (Tr. p. 117). Upon his arrival at the shopping center, Officer Rose, located the subjects and after they returned to their automobile and started to leave he placed them under arrest (Tr. p. 109). The search then took place.

REASONS FOR DENYING THE WRIT

Petitioner has failed to comply with Rule 39 of this Court which requires that all briefs be printed. However, respondent does not rely on this objection, but neither does he waive it.

Petitioner has further failed to set forth any grounds under Rule 19 of this Court which would warrant the granting of a Writ of Certiorari to review the decision of the Supreme Court of Indiana. Petitioner has wholly failed to show any conflict among the lower court decisions, or that the decision of the Supreme Court of Indiana is contrary to the decisions of this Court. Neither has the petitioner shown that an important or pressing question of

constitutional law is involved. The Petition for Writ of Certiorari should therefore be denied.

ARGUMENT

THE ADMISSION OF EVIDENCE DISCOVERED BY AN ARRESTING OFFICER IN THE TRUNK OF AN AUTOMOBILE AFTER AN ARREST PURSUANT TO A RADIO DISPATCHER'S CALL, COUPLED WITH A PERSONAL OBSERVATION, DID NOT VIOLATE THE CONSTITUTIONAL TENETS OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

During the course of the pre-trial pleadings, the Petitioners moved to suppress evidence found in the trunk of Petitioner Suber's automobile, consisting of eight men's suits, with price tags still attached, several pairs of men's trousers, and a woman's coat. The trial court overruled this motion and part of this evidence was introduced at trial over defense objections. Petitioner in essence argues only two points: 1) That the search of the trunk incidental to the arrest was unreasonable in that the arrest was not lawful because the officer's "probable cause" for making the arrest was the hearsay report of a police radio dispatcher which was in turn based on hearsay. 2) That Petitioner Manson did have "standing" to move to suppress evidence obtained by an alleged illegal arrest even though she was a mere guest in the automobile.

In regard to this latter point, it is noted that the Indiana Supreme Court in *Manson v. State*, — Ind. —, 229 N.E.2d 801, 803, said:

> "Parenthetically, we may say appellant Manson has no standing to ask that the evidence obtained in the search of the car be suppressed, since she did not own it, and was not in possession or control of it. 25 I.L.E. Search & Seizure, § 5, p. 417.

However, as Petitioner points out, the United States Supreme Court said in *Jones v. United States*, 362 U.S. 257, 267 (1960):

> "* * * No just interest of the Government in the effective and rigorous enforcement of the criminal law will be hampered by recognizing that anyone legitimately on premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him. * * * "

It is to be noted that the *Jones* opinion refers to "premises", and it is therefore arguable that this rule was not meant to be extended to automobiles, *United States v. Smith*, 357 F.2d 318 (6th Cir. 1966), however there is authority to the contrary. *United States v. Peisner*, 311 F.2d 94, 5 A.L.R.3d 1196 (4th Cir. 1962). For this reason Respondent, while not conceding the point, does not seriously argue that Petitioner Manson had no right or standing to move for suppression of the evidence obtained from Petitioner Suber's automobile. Petitioner takes this position because the record clearly indicates that Officer Rose arrested both Petitioners Suber *and* Manson at the same time, and the subsequent search was incidental to the arrest of *both* Petitioners. In sum even if Respondent concedes that Petitioner Manson had standing to suppress the evidence, she gains nothing by the concession because the evidence was properly admissible against her because the search and seizure incident to a lawful arrest was not unreasonable,

and evidence resulting therefrom was properly admitted against either defendant.

Thus the sole issue is whether the search was unreasonable in that Officer Rose had no "probable cause" to make the arrests. However there is one factor that must be discussed before the facts are argued, i.e., whether state or federal law controls the issue of "probable cause". This court made clear in *Mapp v. Ohio*, 367 U.S. 643 (1961), that the state courts are required by the United States Constitution to bar the use of evidence obtained in violation of Federal constitutional guarantees against unreasonable searches and seizures. However *Ker v. California*, 374 U.S. 23, 31 (1963), established that the States are not precluded from the development of "working rules" governing arrests, searches, and seizures thereby enabling the states to meet the "practical demands of effective criminal investigation and law enforcement", so long as those "working rules" do not violate the constitutional proscription of unreasonable searches and seizures which render such evidence inadmissible against a party who has standing to complain. With this in mind Respondent turns to the guidelines and rules pertaining to "probable cause" as applied in Indiana and Federal Courts.

It is settled law that "probable cause" for arrest exists where the arresting officer has knowledge of facts and circumstances which he reasonably believes to be trustworthy information, and which is sufficient in itself to warrant a man of reasonable caution to believe that an offense has been or is being committed.

Carroll v. United States, 267 U.S. 132 (1925);
Henry v. United States, 361 U.S. 98 (1959);
Hanger v. State, 199 Ind. 727, 160 N.E. 449 (1928).

And "probable cause" has been defined as a reasonable ground for belief of guilt not necessarily entailing evidence sufficient to justify condemnation or conviction, but meaning more than mere suspicion. It is not a technical concept but rather the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

Brinegar v. United States, 338 U.S. 160 (1949).

It is submitted by Respondent that this case is controlled by *Draper v. United States,* 358 U.S. 307, 311 (1959), where this court was confronted by an accused whose first contention was that the arrest made without a warrant by a federal narcotics agent was based on hearsay, and not competent evidence, and therefore should have been disregarded by the narcotics agent in his decision to arrest the accused, and therefore the agent had no probable cause to make the arrest and subsequent search. The Court in that case said:

> "Considering the first contention, we find petitioner entirely in error. Brinegar v. United States, 338 U.S. 160, 172-173, has settled the question the other way. There in a similar situation, the convict contended 'that the factors relating to inadmissability of the evidence [for] *purposes of proving guilt at the trial,* deprive[d] the evidence as a whole of sufficiency to show probable cause for the search . . .' Id., at 172 (Emphasis added). But this Court rejecting that contention, said: '[T]he so-called distinction places a wholly unwarranted emphasis upon the criterion of admissibility in evidence, to prove the accused's guilt, of the facts relied upon to show probable cause. That emphasis, we think, goes much too far in confusing and disregarding the difference between what is required to

> prove guilt in a criminal case and what is required to show probable cause for arrest or search. It approaches requiring (if it does not in practical effect require) proof sufficient to establish guilt in order to substantiate the existence of probable cause. There is a large difference between the two things to be proved [guilt and probable cause], as well as between the tribunals which determine them, and therefore a like difference in the *quanta* and modes of proof required to establish them. 338 U.S. at 172-173.' "

Petitioners are urging that whenever a report or call is received by a police officer from a radio dispatcher, that a person or persons of a certain description, and/or occupying a certain type of vehicle, have committed, or are committing a crime, that officer, in order to perfect a valid arrest, must check the sources of the dispatcher's report, and the failure to do so renders the arrest void for lack of "probable cause". It is readily apparent that such an approach to the validity of arrests would be a great boon to the criminal element. No longer would "roadblocks", or "crime alert calls", or similar tactics employed by modern police forces and based on police dispatcher's communications be workable methods of investigation and operation. In effect this would tie the law enforcement officials' hands and create a situation tantamount to an open door policy for the commission of crime by use of the automobile. Under the rule as seemingly proposed by Petitioner, the felons would be two counties away and "moving on", by the time any corroborating investigation could be made concerning the police dispatcher's report or call.

Indiana law of course is contrary to the position taken by Petitioner, and clearly in line with Draper. Thus in Indiana as under Federal law an officer may ground his

"reasonable and probable cause for belief" on information furnished by another party, and the question to be determined is not the positive establishment of the guilt of the defendant of the criminal offense, but merely whether "reasonable and probable cause existed for believing" that a person had in his possession some evidence of the commission of a crime, i.e., the property alleged to be taken *Gwinn v. State*, 201 Ind. 420, 166 N.E. 769 (1929), and this would be true even if a third party had furnished the information to the informant *Hinds v. State*, 201 Ind. 563, 170 N.E. 539 (1930); 3 I.L.E. Arrest and Recognizance § 4, p. 44.

Petitioner has relied on four cases as authority supporting his argument. Respondent submits that those cases are not controlling of the facts and issues at bar. The first two cases, *Aguilar v. Texas*, 378 U.S. 108 (1964) and *United States v. Ventresca*, 380 U.S. 102 (1965) are distinguishable on their facts and their issues. Both of those cases dealt with the proposition that affidavits supporting a search warrant must be supported by other information to which the magistrate may look prior to issuing a warrant. *Ventresca* merely clarified *Aguilar*, and noted that there are exceptions to the rules as laid down in *Aguilar etc.*, where seizure is impossible except without a warrant [note 2, p. 745]. Petitioner's third case, *McCray v. Illinois*, — U.S. —, 87 S.Ct. 1056 (1967) was concerned with the issue of disclosure of an informant's name. The Supreme Court held that disclosure was not necessary, and upheld a search incidental to a lawful arrest even though it was based on hearsay. The case of *Farrow v. Maryland*, 233 Md. 526, 197 A.2d 434 (1964), the last case cited by Petitioner, is seemingly one which he did not wish to cite since it is di-

rectly contra to the position he is urging upon the court. In that case the court upheld as based on probable cause an arrest of a subject who was described over a police dispatcher's call. The court in speaking of the hearsay issue very succinctly pointed out the true rule.

> "* * * We note that in many cases coming before this Court where the lawfulness of an arrest and of a search incidental thereto are in issue, direct evidence to show the basis upon which the arresting officers acted either is not offered at all, or is alluded to guardedly as 'information received' or in some other and equally uninformative manner (doubtless designed to avoid an objection that it is hearsay), or is actually excluded as hearsay. On the question of guilt or innocence of the defendant it clearly is hearsay and hence is inadmissible; but on the issues of probable cause and the lawfulness of arrest and of admissibility of evidence obtained through any search made in connection with the arrest, such testimony, even if hearsay, is directly relevant and admissible. * * * " p. 532

In summation Petitioner has not shown that the information and report, issued by a radio dispatcher on the report of shoplifting by person or persons unknown, is insufficient to form a basis for "probable cause" to arrest subjects who have been identified by both their personage, and their automobile. Under these facts no constitutional violations of either the Fourth or Fourteenth Amendments to the United States Constitution have been shown.

CONCLUSION

Petitioner has failed to present a question of sufficient merit under Rule 19 of this Court to warrant review of the decision of the Indiana court.

WHEREFORE, respondent prays that the petition for Writ of Certiorari be denied.

Respectfully submitted,

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SUPREME COURT, U. S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 196

NO. 1106

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FILED
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ARLENE MANSON)
)
Petitioner)
)
v)
)
STATE OF INDIANA)
)
Respondent)

REPLY OF PETITIONER TO RESPONDENT'S BRIEF

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 1106

ARLENE MANSON	)
	)
Petitioner	)
	)
v	)
	)
STATE OF INDIANA	)
	)
Respondent	)

REPLY OF PETITIONER TO
RESPONDENT'S BRIEF

The first argument made by the Attorney General of the State of Indiana is that the petition filed by the petitioner Manson does not comply with Rule 39 of this Court.

Section 4 of said rule is as follows:

> "Printing, as the term is used in these rules, shall include any process capable of producing a clear black image on white paper but shall not include ordinary carbon copies. If

papers are filed in a form which is not clearly legible, the clerk will require that new copies be substituted, but the filing shall not thereby be deemed untimely."

The petition was accepted for filing by the Clerk of this Court on February 12, 1968 and to this date petitioner has not been ordered to file substitute copies.

The respondent next argues that the decision of the Supreme Court of the State of Indiana is not contrary to the decisions of other Federal courts, including the Supreme Court of the United States.

Respondent apparently has not read the case of Weeks v. United States, cited at page 9 and the case of Potter v. United States, cited at page 11 of the original Petition for Writ of Certiorari filed on behalf of the petitioner Arlene Manson.

We feel that the instant case comes squarely within the framework of

Beck v. Ohio, (1964) 379 U.S. 89, 85 S. Ct. 223, 13 L. Ed.(2) 142, wherein this Court stated:

> "An arrest without a warrant bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the arrest or search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment."

This Court in the recent case of Katz v. United States, (1967) 88 S. Ct. 507 has reaffirmed Beck.

We submit that the arrest and subsequent search of the automobile cannot be upheld upon the statement of an unknown informant to a saleslady to a police radio dispatcher to an officer in a police car. The arresting officer did not see, hear or smell or otherwise perceive anything else to give him grounds for believing that the petitioner Manson acted unlawfully at the time that he placed her under arrest

and subsequently conducted a search of the automobile where she was found.

For the above reasons we respectfully pray the Court to issue a Writ of Certiorari to the Supreme Court of the State of Indiana to review their final judgment heretofore entered.

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